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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/605,599	10/11/2003	Peter A. Hogenson	BOE 0435 PA	2598
44702	7590	08/09/2006	EXAMINER	
OSTRAGER CHONG FLAHERTY & BROITMAN PC 250 PARK AVENUE, SUITE 825 NEW YORK, NY 10177			RADI, JOHN A	
			ART UNIT	PAPER NUMBER
			3641	

DATE MAILED: 08/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/605,599	HOGENSON ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	John A. Radi	3641	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 June 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments filed April 21, 2006 have been fully considered but they are not persuasive.

Examiner disagrees with regard to applicant's argument that part 27 of Schmidt is not a solid film. As stated, part 27 is a pad formed from an elastomeric material and is therefore made of a solid material as opposed to a gas or liquid. Any further limitation to the material should be added to the claim to be given patentable weight.

With regard to the argument that Schmidt does not teach a semi-rigid thermal protection system, the applicant's attention is drawn to applicant's specification page 16 that states "Thermal protection systems are well known in the art and are known to come in a variety of configurations and materials. TPS such as ceramic tiles utilized on the space shuttle are only one example" which would lead one to conclude that "semi-rigid TPS" includes the commonly used ceramic tiles as used and understood in the art. Furthermore, the ceramic tile system taught by Schmidt is not a single ceramic sheet covering the tank, but rather a series of rigid ceramic plates which aren't bonded to each other in a rigid plate but are laid against each other (see figure 5), which allows the ceramic plates as a whole to form a "semi-rigid thermal protection system" which is then bonded.

With regard to applicant's piecemeal analysis against the 103 rejection that Middleton doesn't teach the use of polyurethane foam, the examiner reads the term "foam" broadly and is not limited by insulating qualities which aren't mentioned in the

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claim, therefore the entire assembly consists of the polyurethane adhesive layer taught by Middleton, the foam assembly of Schmidt, and any additional gases trapped in the application of one to the other.

Furthermore, while not made a formal rejection, Schmidt does teach the use of a foam layer and it would have been obvious to one having ordinary skill in the art to select from known materials (polyurethane or polyimide foams), based on its suitability for the intended use. Therefore, because Middleton teaches the use of polyurethanes in a cryogenic environment it would suggest that it doesn't fail in the extreme temperatures caused by such, and would therefore be a suitable material to choose from when selecting a foam assembly for Schmidt.

With regard to applicant's arguments directed to the honeycomb core, the examiner disagrees with applicant's assertion that Middleton is not suitable to the task. The limitations that the honeycomb core not be cellular or have open cells is not mentioned in the claims and is therefore not limiting in a patentable sense.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Schmidt (US 5560569).

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Schmidt teaches an aircraft thermal protection system which can be bonded to a cryogenic fuel tank wall (col. 3, line 13). Said assembly comprising: a foam assembly (29), a solid film bonded to outer surface of foam assembly (27); and a semi-rigid thermal protection system bonded to said foam assembly (25). See column 3, paragraphs 1-6 for a complete description of the materials used in said assembly.

With respect to claim 2, said foam assembly is a polyimide foam layer (col. 4, line 3).

With respect to claim 6, a silicon layer is used to bond assembly together (col. 4, line 9).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

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consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 3-5, 7-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt as applied to claims 1 and 2 above, and further in view of Middleton (US 3365897).

With respect to claims 3, 4, 7 and 17 Schmidt teaches the invention as described above with respect to claims 1 and 2, but doesn't teach a polyurethane foam layer. Middleton and Schmidt are in the same field of endeavor, being cryogenic insulation for tanks and space vehicles. Middleton teaches use of a polyurethane layer (31, 37). The motivation for combining Middleton and Schmidt can be found in Schmidt, which is to create a thermal protection system which provides a moisture barrier over a large range of temperatures while providing a uniform outer surface to minimize drag at hypersonic speeds (col. 1, lines 27-37). Therefore, it would have been obvious to one skilled in the art at the time of invention to include a polyurethane layer of Middleton as part of the foam assembly taught by Schmidt to create a more effective cryogenic assembly.

With respect to claim 5, 11 and 18, Schmidt teaches the invention as described above with respect to claims 1 and 2, but doesn't teach a honeycomb core positioned within the foam assembly. Middleton teaches use of a honeycomb core (23). The motivation for combining Middleton and Schmidt can be found in Schmidt, which is to create a thermal protection system which provides a moisture barrier over a large range of temperatures while providing a uniform outer surface to minimize drag at hypersonic speeds (col. 1, lines 27-37). Therefore, it would have been obvious to one skilled in the

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art at the time of invention to include a honeycomb layer of Middleton as part of the assembly taught by Schmidt to create a more effective cryogenic assembly.

With respect to claims 8, 13, 15, and 21, Schmidt teaches the invention as described above with respect to claims 1 and 2, but doesn't teach a second solid film layer bonded to inner surface of foam layer. Middleton teaches use of a film layer bonded to inner surface of foam layer (29). The motivation for combining Middleton and Schmidt can be found in Schmidt, which is to create a thermal protection system which provides a moisture barrier over a large range of temperatures while providing a uniform outer surface to minimize drag at hypersonic speeds (col. 1, lines 27-37). Therefore, it would have been obvious to one skilled in the art at the time of invention to include a solid film layer bonded to the inner surface of the foam layer of Middleton as part of the assembly taught by Schmidt to create a more effective cryogenic assembly.

With respect to claims 9, 10, 12, 14 and 15, Schmidt teaches the invention as described above with respect to claims 1 and 2, but doesn't teach a fabric layer bonded to solid film layer. Middleton teaches use of an impact resistant fabric layer (39). Therefore, it would have been obvious to one skilled in the art at the time of invention to include the impact resistant fabric layer of Middleton as part of the assembly taught by Schmidt to create a more effective cryogenic assembly.

With respect to claim 16, said foam layer is a polyimide foam layer (col. 4, line 3).

With respect to claim 19, a silicon layer is used to bond assembly together (col. 4, line 9).

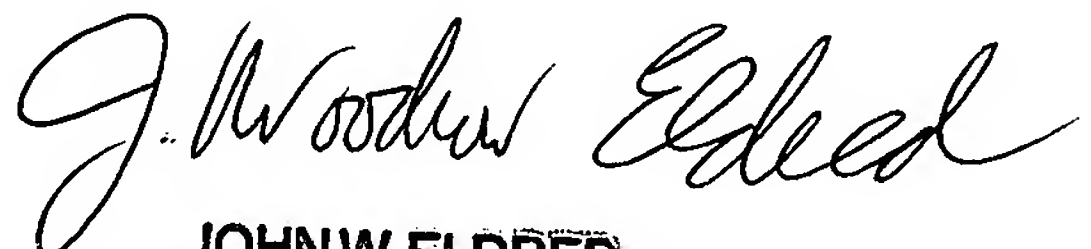
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With respect to claims 20 and 22, Schmidt teaches the invention as described above with respect to claims 1 and 2, but doesn't teach a second fabric layer bonded to the inside of foam layer. Middleton teaches use a film layer bonded to the inner (29) and outer surfaces (33). Therefore, it would have been obvious to one skilled in the art at the time of invention to include the impact resistant fabric layer of Middleton as part of the assembly taught by Schmidt to create a more effective cryogenic assembly.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John A. Radi whose telephone number is 571-272-5883. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Carone can be reached on 571-272-6873. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

  
JOHN W. ELDRED  
PRIMARY EXAMINER